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Supreme Court of the United States

OCTOBER TERM, 1967

No. 862

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
Petitioner

v.

THE AKRON & BARBERTON BELT RAILROAD COMPANY,
ET. AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Order of Railway Conductors and Brakemen prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled cause on July 31, 1967 (App. 91a).[1]

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[1] "App." refers to the separate appendix filed in this Court; "R." refers to the Joint Appendix filed by petitioner and respondents in the Court below, in causes 20,158 and 20,191.

OPINIONS BELOW

The opinions of the United States District Court for the District of Columbia are reported at 250 F. Supp. 691 (D.C.D.C., March 3, 1966) and 253 F. Supp. 538 (D.C.D.C., April 19, 1966). App. 2a-15a, 25a-29a. The opinions of the United States Court of Appeals dated May 12, 1967 and July 31, 1967 (App.. 33a-90a) are not yet officially reported. They are unofficially reported at 65 LRRM 2229, 2995. Related decisions of the District Court and of the Court of Appeals involving other parties to this dispute are reported at 252 F. Supp. 207, 254 F. Supp. 306, 253 F. Supp. 682, 255 F. Supp. 476, and 380 F. 2d 570.

JURISDICTION

The judgment of the United States Court of Appeals was entered on July 31, 1967 On October 18, 1967, the Chief Justice of the United States extended the time within which petitioner might file this petition for a writ of certiorari to and including November 28, 1967. The jurisdiction of this Court is conferred by Section 1254 of Title 28, United States Code.

QUESTIONS PRESENTED

1. Whether the interim two-year crew consist work rules created by Arbitration Board No. 282, under the authority of Public Law 88-108, continue to survive after the end of the two-year period of the Award as a permanent part of the collective bargaining agreements between the parties, despite the intent of Congress and of the Arbitration Board, and despite the express provisions of Public Law 88-108 and of the Award, that they shall continue in force for two years only.

2. Whether notices served by the petitioner on the respondent carriers, during the two year period, seeking negotiations to reach crew consist agreements in accord with the standards of Arbitration Board No. 282, were premature and ineffective to create any duty on the part of the carriers to bargain, despite the intent of Congress to provide a 2-year period in which the parties could further attempt to reach agreements, and despite the command of Board No. 282 to the parties to return to their local properties and negotiate lasting agreements.

3. Whether the Court below properly enjoined the members of the petitioner brotherhood from withdrawing from service at the end of the two-year period because of the refusal of the carriers to negotiate and mediate as required by the Railway Labor Act and by the Award of Board No. 282, despite the provisions of Section 4 of the Norris-LaGuardia Act that no Court may issue a restraining order to prohibit any person from ceasing or refusing to perform work, and despite Section 8 of that Act which prohibits the issuance of a restraining order in favor of a complainant who has failed to comply with any obligation imposed by law or who has failed to make every reasonable effort to settle such dispute.

STATUTES INVOLVED

Public Law 88-108, 77 Stat. 132 (App. 111a)

Sections 5 and 6, Railway Labor Act, 44 Stat. 580, as amended, 45 U.S.C. §§ 156, 156 (App. 115a)

Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. § 101, et seq. (App. 125a)

Relevant portions of these statutes are set out in a separate Appendix to this petition.

STATEMENT OF THE CASE

This appeal involves the consequences which flow from the expiration on January 24 (or 25), 1966,[2] of the award of Arbitration Board No. 282 (App. 95a). The issues concern most of the nation's major railroads and four labor organizations which represent operating railroad employees.

Prior to 1963, the use of firemen on locomotives was governed by the National Diesel Agreement of 1950 and the consist of road and yard crews was governed by system-wide or local agreements, formal and informal, or by unwritten customs and practice, and in some states was affected by state "full crew" laws. *Report of the Presidential Railroad Commission* (1962) pp. 36, 54. On November 2, 1959, most of the railroads in the United States served on the labor organizations written notices pursuant to Section 6 of the Railway Labor Act proposing the elimination of all agreements which required the use of firemen on other than steam powered engines or which required a stipulated number of trainmen in train crews, leaving the use of such employees in the unrestricted discretion of railroad management (R. 23-25). On September 7, 1960, the labor organization served counter-proposals under Section 6 of the Railway Labor Act proposing the establishment of rules or agreements to provide a minimum engine crew of one engineer and one fireman, and a minimum train crew of not less than one conductor and two trainmen. (R. 25).

Thereafter the parties engaged in negotiations on the properties and in mediation, as required by Sections 5 and 6 of the Railway Labor Act, and also in media-

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[2] The correct expiration date is in issue between other parties, but is not material to this petitioner.

tion before a Presidential Railroad Commission, appointed by President Eisenhower. Having exhausted these procedures, the carriers served notice on the organizations that as of August 16, 1962, their proposed elimination of existing agreements would unilaterally be placed into effect. Upon suit brought by the organizations, this Court held that the parties had exhausted the procedures of the Railway Labor Act, and were free to resort to self help. *Brotherhood of Locomotive Engineers* v. *Baltimore and Ohio R. Co.*, 372 U.S. 284 (March 4, 1963). On April 3, 1963, President Kennedy, acting pursuant to Section 10 of the Railway Labor Act, appointed an emergency board, headed by Judge Samuel Rosenman (Emergency Board No. 154) to make recommendations for resolution of the dispute. The Secretary of Labor and the National Mediation Board joined in further negotiations between the parties, all without success. The carriers then announced that they would place their new rules into effect on July 10, 1963, and the organizations indicated that this would precipitate a strike (Senate hearings, p. 42).[3] The President then requested the parties to maintain the status quo until July 29, in order that he might submit a message to Congress. On July 22, the President submitted his message, recommending emergency legislation, and accompanied by a draft bill. (Senate hearings, pp. 4-15). The President's message and bill proposed a two-year period of further negotiations by the parties, during which time temporary, interim work rules could be imposed by the Interstate

[3] References hereafter to "Senate hearings" and "House hearings" refer, respectively, to Hearings before the Senate Committee on Commerce on S.J. Res. 102, 88th Cong. 1st Sess. and to Hearings before the House Committee on Interstate and Foreign Commerce on H.J. Res. No. 565, 88th Cong. 1st Sess.

Commerce Commission, such rules to govern until the parties reached agreement, but not to exceed two years. Subsequent proceedings before the House and Senate Commerce Committees and the reports of both Committees show that the proposed legislation contemplated a two-year moratorium on the right of the parties to engage in self-help, and during which they were expected to engage in further effort to reach agreement, with the guidance of temporary rules imposed by an arbitration board, which would govern until the parties reached agreement, but not to exceed two years.

Congress thereupon enacted Public Law 88-108 (77 Stat. 132, App. 111a) effective August 28, 1963. It conformed to the President's recommendations with the exception that the interim rules would be imposed by a special arbitration board, rather than by the Interstate Commerce Commission. The law prohibited the carriers and the organizations from implementing their notices of November 2, 1959, and September 7, 1960, except by agreement or arbitration, established an arbitration board of seven members, authorized it to make a decision as to those portions of the notices dealing with the use of firemen and crew consist, and provided that the arbitration award "shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed 2 years from the date the award takes effect . . ."

The Arbitration Board was appointed, held hearings, and made an award with respect to the use of firemen and crew consist, dated November 26, 1963, and effective January 25, 1964 (App. 95a). The portions of the award material to this petition provided:

1. That those portions of the notices of the parties concerning the use of firemen and crew consist "are

denied, except to the extent hereinafter provided." (Sec. I);

2. That the issue of road and yard crew consist shall be remanded to the local properties for negotiation, that pending the consummation of local agreements no change may be made in pre-existing rules, that either party may give written notice of a proposed change in a stipulated number of trainmen where existing rules require the use of more or less than 2 trainmen, that if the parties cannot agree either party may refer the dispute to a special board of adjustment whose decision shall be binding on the parties, and that displaced employees should retain their right to assignment until death, retirement or discharge for cause (Sec. III);

3 That "this Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise." (Sec. IV).

Pursuant to the command of the Board, during the effective period of the award the petitioner served upon various respondent railroads a notice proposing an agreement that the minimum crew in road train service shall consist of not less than one conductor and two brakemen (R. 76-78, 82). The carriers all took the position that the matter of crew consist was not subject to negotiation during the two-year period of effectiveness of the award, and declined to negotiate or to enter into an agreement on the subject (R. 78-79, 83-86). In five instances petitioner invoked the services of the National Mediation Board which, over the protests of the carriers, assumed jurisdiction of the dispute, and in these instances the matters remained pending before the National Mediation Board on the date of termination of the award. (R. 79, 87-159). The same events occurred with respect to notices served

by the Brotherhood of Railroad Trainmen. During the two-year period the carriers eliminated 18,000 firemen positions and 7,574 trainmen positions (R. 27-28).

On January 19, 1966, 178 carriers commenced the instant action against the Brotherhood of Railroad Trainmen, the Switchmens Union of North America, and the Order of Railway Conductors and Brakemen, seeking an adjudication that the interim two-year crew consist rules created by the Board continued to survive as permanent rules, and an injunction restraining the employees represented by the labor organizations from withdrawing from service because of the refusal of the carriers to meet and negotiate. Jurisdiction of the District Court was invoked under 28 United States Code, Sections 1331, 1337, 2201, and 2202. (R. 7). Despite denials of the organizations that any strike was intended, the District Court issued a temporary restraining order on January 24, 1966, which remained in effect until March 29, 1966, when it was abandoned by the plaintiffs (R. 28, 30, 39).

After hearing, the District Court held that:

(1) Crew consist rules established by agreements or by awards of special Boards of Adjustment under Section III of the Award survived the termination of the effective period of the Award and created a new status which must be maintained by the parties until changed by agreement, or until one of the parties had served a notice under Section 6 of the Railway Labor Act and had exhausted the procedures of that Act, and that pre-existing crew consist rules were not revived upon termination of the Award (R. 47-49, 171; App. 10a-13a).

(2) The carriers may not take further steps to eliminate additional positions under the Award after January 25, 1966 (R. 49, 171; App. 11a-13a).

(3) None of the provisions of the Norris-LaGuardia Act are applicable to the dispute between the parties, and the labor organizations were properly subject to injunction (R. 51, 174; App. 14a).

(4) The notices served under Section 6 of the Railway Labor Act by the petitioner during the two-year period of effectiveness of the Award of Arbitration Board No. 282, proposing the establishment of rules that a minimum crew should consist of a conductor and two trainmen, were premature, that the respondent carriers had no obligation to negotiate with petitioner as required by Section 6 of the Railway Labor Act until after January 25, 1966 (R. 51, 163-165, 172-173; App. 13a, 25a-27a), and that petitioner could not lawfully invoke the services of the National Mediation Board until after negotiations between the parties had occurred after January 25, 1966, and that the applications for mediation made by petitioner during the two-year period had been premature (R. 165-167, 173; App. 27a-29a).

On appeal, the Court of Appeals affirmed these rulings.

The carriers instituted a similar action against the Brotherhood of Locomotive Firemen and Enginemen, seeking an adjudication of the consequences of termination of the effective period of the Award as to firemen, and an injunction, which was separately heard and decided by the District Court. 253 F. Supp. 682; 255 F. Supp. 476. On appeal, the causes were consolidated for hearing and decision. However, this petitioner represents only conductors and trainmen and is not concerned with those portions of the decisions below construing the effect of termination of the Award as to firemen.

REASONS FOR ALLOWANCE OF THE WRIT

(1) Arbitration Board No. 282 in its award, "froze" all existing crew consist rules and practices for a two-year period except that in the case of branch lines or road service where the existing rules or practice required the employment of more or less than two trainmen, either party might apply to the Board for modification of the rule. The neutral members of the Board wrote an accompanying opinion to the Award in which they said that:

> "It was agreed that all situations other than those involving a crew consist of one conductor (foreman) and two brakemen (helpers) would be reviewable. So-called 'one-and-two' situations would remain unchanged. Thus, the organizations could seek changes on the basis of alleged undermanning if the present rule or practice called for only one brakeman or helper. The carrier, for example, could seek change on the basis of alleged overmanning if the present rule or practice called for three or more brakemen or helpers . . . (54 LRRM 20, 36).

The Board rejected the contention of railroad management that it should have unlimited discretion to determine crew consist, saying that "the employees involved, however, are entitled to more protection than is afforded by these assurances of good faith." (54 LRRM 35). It directed the parties to return to their local properties to negotiate local agreements disposing of the issue. During the two-year period of the effectiveness of the Award the petitioner attempted to negotiate agreements with the respondents providing for a minimum crew of a conductor and two trainmen, according to the guidelines of the Board, but the carriers adamantly refused to agree, or even to negotiate.

They proceeded unilaterally to apply to the Board for crew reductions in individual cases. At the end of the two-year period they commenced the present action and obtained an adjudication that the interim rules so created in individual cases by the Board or by special agreements, continued to exist as a part of the collective bargaining agreements between the parties. In reaching this conclusion, we submit, the Court below misconstrued the intent of the President, the Congress and of the arbitration board, as well as the clear language of the law and of the Award.

The President in his message to the Congress made the following proposal:

> "I recommend, therefore, that—for a 2-year period during which both the parties and the public can better inform themselves on this problem and alternative approaches—interim work rules changes proposed by either party to which both parties cannot agree should be submitted for approval, disapproval or modification to the Interstate Commerce Commission . . . .
>
> I stress the fact that, unlike compulsory arbitration, these procedures would provide only interim changes and only for those situations and for such length of time as the parties are unable to agree by collective bargaining. (Senate hearings, pp. 8-10).

Secretary of Labor Wirtz, who testified in support of the President's bill, said to the House Commerce Committee that at the end of the two-year period "the interim rule would at that point no longer be effective" (House Hearings, p. 55) and agreed that ". . . that decision goes into effect and stays in effect until either the parties reach an agreement by collective bargaining or the 2-year period expires" (House

Hearings, p. 59). Identical representations as to the effect of the proposed legislation were made by Chairman Walrath of the Interstate Commerce Commission, Acting Secretary of Commerce Roosevelt, and spokesman for the carriers. (See House Hearings pp. 64, 172, 174, 551, 555, 605, 982.) The same explanations with respect to the purpose and effect of the bill were repeated before the Senate Commerce Committee. See Senate Hearings, pages 49-51, 54, 62-63, 364, 370-371, 375, 414-415, 427.

The House and Senate Committee reports repeated the same understanding. Senate Report No. 459, 88th Congress, said:

> "Under the terms of the resolution, the arbitration award would be binding for no more than 2 years, unless the parties mutually agree to a different period. The Committee has imposed this limitation in harmony with the President's recommendation, in order to closely limit the scope and impact of the resolution." (U.S. Code Congressional and Administrative News, 1963, p. 1406)

And the House Committee, in House Report No. 713, 88th Congress, said:

> "The arbitration award is to be in effect for the period determined by the arbitration board but that period cannot exceed 2 years from the date the award takes effect; however, the award can be in effect for a different period if the parties agree thereto."

Both P.L. 88-108 and the Award specifically provided that the Award should be limited to a duration of two years. Thereafter this Court had occasion to interpret the effect of the Award, and so described it. In *Brotherhood of Locomotive Engineers* v. *Chicago,*

Rock Island and Pacific R. Co., 382 U.S. 423 (January 31, 1966) this Court said:

> "In his message the President expressed no desire to have them pass a law that would finally and completely dispose of the problem of the number of men who should man the crew of a train, but in fact he warned the Congress that 'it would be wholly inappropriate to make general and permanent changes in our labor relations statutes on this basis' and that any 'Revolutionary changes even for the better carry a high price in disruption . . . (that) might exceed the value of the improvements.' . . .
>
> Congress enacted the bill proposed by the President with one significant change. He had recommended that a binding determination of the issues not resolved by collective bargaining be made by the Interstate Commerce Commission . . . Subsequent to this both the House and Senate Committees dropped a section of the proposed bill that would have vested power in the Commission to make binding settlements. Instead of that section the Act passed by Congress provided for establishment of an arbitration board to consist of seven members, two appointed by the railroads, two by the unions and three to be appointed by the President should the four members named by the railroads and unions fail to agree among themselves on an additional three. The arbitration board was given power to resolve the dispute over the firemen and full-crew questions. Their award was to be a complete and final disposition of these issues for a period not exceeding two years from the date the awards would take effect. . . . Congress wanted to do as little as possible in solving the dispute which was before it . . ."

This history makes clear beyond controversy that the interim work rules created by or under the Award,

in the language of this Court, were to dispose of the matter "for a period not exceeding two years from the date the awards would take effect . . ." or, as Secretary Wirtz said, "the interim rule would at that point no longer be effective."

Despite all of this, the Court below held that the interim work rules created by or under the Award survived the two-year period and continue as permanent rules between the parties. The Court below did not base its decision on any language of the Award or of the enabling act, or of its legislative history, but on the practical consideration that it would be "unreasonable" and "would necessarily mean trying to recreate a practically unrecoverable situation and sweeping away a host of rights that had already vested concomitant with the award, made final under the Act, permitting reductions in the work force." (App. 46a-47a.) To us, this means that the Court below, believing itself capable of better legislative draftsmanship and purpose than the Congress, determined to amend the law. Further, its assumption of unsettling havoc if the interim rules should not remain effective is unwarranted. Although 7,574 trainmen positions became earmarked for future elimination during the two-year period, encumbent employees were entitled to remain in the positions until death, retirement, or discharge for cause, and there is no evidence in the record as to the number, if any, of positions which had actually been eliminated at the end of the two-year period.

Further, even if the decision of the Court below was correct, it was incomplete and defective. A total of 122,000 trainmen positions were involved in the crew consist dispute. *Report of the Presidential Railroad Commission,* p. 27. The Arbitration Board created an

interim two-year rule as to all of them, by "freezing" all existing positions for the two-year period, except to the extent that changes might be made in individual cases involving crews of more or less than two trainmen, by application to the Board. A total of 7,574 positions were eliminated pursuant to this provision. No change was made in the status of the remaining 122,000 positions. Although the District Court held that the Award created a new status, or plateau, which survived the termination of the Award, the decree of the District Court adjudicated only that the awards of Special Boards of Adjustment, and special agreements entered into under the Award, authorizing the 7,574 reductions, created a new status which must be maintained. (R. 171-172). The decree was silent as to the survival of the main portion of the Award. Thus the decree covered only a small portion of the rules established by the Board; the few unusual situations in which previous crew consists of one-and-three or more were reduced to one-and-two. Although this error was briefed and argued to the Court of Appeals that Court made no disposition of the issue. The carriers take the position that their Section 6 notices of November 2, 1959, ripened into effectiveness before the enactment of Public Law 88-108 and that all pre-existing crew consist rules and agreements have expired. (Complaint, par. 12, 13, 17; R. 14-17.) Thus the status of all of the 122,000 trainmen positions, except for 7,574, is in doubt and confusion. It would seem that if the work rules created by the Award survive its termination, all of them survive, not merely those governing 7,574 reductions which were favorable to the carriers, and that the status of all the remaining positions, which were frozen by the Board for the two-year period, also continue as permanent crew consist rules

binding in the parties. But the Court below made no decision as to the effect of the expiration of the Award on any of them except 7,574.

(2) The Arbitration Board, by providing that one-and-two crew consists should remain unchanged for the period of the Award, set a guideline or standard and, having done so, directed the parties to return to their local properties and negotiate permanent agreements. Petitioner attempted to do so, serving notices on the respondent carriers of its desire to enter into crew consist agreements on this standard (R. 76, 82). But the carriers refused, and the Court of Appeals held that refusal proper (App. 55a-56a).

The obvious purpose of the emergency legislation was to provide an additional two-year period in which the parties would have the obligation to engage in further bargaining. President Kennedy, in his message to the Congress, asked for temporary legislation, "... for such length of time as the parties are unable to agree by collective bargaining," not to exceed two years, and Secretary of Labor Wirtz emphasized to the Senate Commerce Committee that:

> ". . . what is contemplated here is a decision which would have controlling effect during that (2 year) period until they agree. No question about it." (S. Hearings, p. 51).

The representative of the respondent carriers described the purpose of the bill most accurately, saying:

> "As I understand the resolution, it imposes a duty upon the parties to attempt to settle their differences. But at the same time it is designed to protect the public interest as a result of the establishment of these interim rules for a period of two years or less, while the parties undertake,

through collective bargaining, to bring about a more permanent solution to their problems." (S. Hearings, p. 375).

Expressions of similar understanding of the purpose of the legislation may be found at House Hearings, pp. 59-60, 81, 109, 114, 565, and at the Senate Hearings, pp. 54, 63, 364, 370-371, 412.

The Court below held, to the contrary, that the effect of the Act and of the Award was to ring down an iron curtain between the parties for a two-year period, during which all progress toward resolution of the dispute was immobilized, and at the end of which the unresolved controversy would flare anew. This is precisely what occurred.

Peculiarly, the Court below held that similar notices served by the Brotherhood of Railroad Trainmen were effective, because they proposed an agreement effective at the expiration of the Award, beginning January 26, 1966 (App. 57a-58a), but that the notices served by petitioner were invalid because they proposed agreements to become effective 30 days after the date of the notices, and nine months prior to the expiration date of the Award. (App. 55a-56a). This cannot be reconciled with the repeated statements of the President, the members of Congress, and the interested parties, that the interim two-year rules were to be effective only until the parties were able to agree, nor with the language of the Award that no change shall be made in existing rules for the duration of the Award "except by agreement." We submit that the construction of the Court below flouts the intent of Congress, and the language of the Award, and will unnecessarily prolong a dispute which could and should have been settled during the two-year period.

(3) Because of its view that the respondent carriers had no obligation to bargain with petitioner during the two-year period for the establishment of permanent crew consist rules, the Court below also held that the members of petitioner Brotherhood were properly enjoined from withdrawing from service, because of the carrier's refusal, at the end of the two-year period. (App. 86a-89a.) It so held despite Section 4 of the Norris-LaGuardia Act (App. 125a) which provides that:

> "SECTION 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing our of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment;"

The dispute between the parties, arising from notices servied by the petitioner to establish agreements, was a "major" dispute. Although this Court has held that a labor organization may be enjoined (solely to maintain the status quo) during the pendency of a "minor" dispute before the National Railroad Adjustment Board, this Court has held that Section 4 of the Norris-LaGuardia Act absolutely prohibits the issuance of an injunction against a withdrawal from service by employees over a "major" dispute. In *Order of Railroad Telegraphers* v. *Chicago & Northwestern R. Co.*, 362 U.S. 330 (1960) this Court said:

> "We hold, with the District Court, that this case involves or grows out of a labor dispute within the meaning of the Norris-LaGuardia Act and that the

> District Court was without jurisdiction permanently to enjoin the strike.
>
> Section 4 of the Norris-LaGuardia Act specifically withdraws jurisdiction from a District Court to prohibit any person or persons from '[c]easing or refusing to perform any work or to remain in any relation of employment' 'in any case involving or growing out of any labor dispute' as 'herein defined.' "

See also: *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U.S. 30, footnote 24; *Elgin, Joliet & Eastern Railway Co.* v. *Brotherhood of Railroad Trainmen*, 302 F. 2d 540 (C.A. 7, 1962) cert. den. 371 U.S. 823; *Chicago, Rock Island & Pacific R. Co.* v. *Switchmen's Union*, 292 F. 2d 61 (C.A. 2, 1961) cert. den. 370 U.S 936; *Missouri-Illinois R. Co.* v. *Order of Railway Conductors*, 322 F. 2d 793 (C.A. 8, 1963); *Pullman Co.* v. *Orders of Railway Conductors*, 316 F. 2d 556 (C.A. 7, 1963).

Further, although the Court below found that the respondent carriers refused to meet and negotiate with petitioner during the two-year period, it also held that Section 8 of the Norris-LaGuardia Act was not applicable. Section 8 (App. 128a) provides that:

> "SECTION 8. No restraining order or injunction relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

The reasoning of the Court of Appeals was that Section 8 was not applicable because the respondent car-

riers had no statutory obligation to negotiate with petitioner during the two-year period (App. 89a). This holding is in square conflict with the decision of this Court in *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R. R.*, 321 U.S. 50 (1944). In that case this Court held that a carrier, which had engaged in the negotiation and mediation of a major dispute as required by law, but which had refused to submit the dispute to arbitration, which was available but not required by law, was barred by the language of Section 8 from obtaining an injunction against a withdrawal from service by a labor organization. This Court said:

> "It (the Norris-LaGuardia Act) sought to make injunction a last line of defense, available not only after other legally required methods, but after all reasonable methods as well, have been tried and found wanting. This purpose runs throughout the Act's provisions. . . . Without question, as respondent says, arbitration under the Railway Labor Act is voluntary. . . . Respondent's failure or refusal to arbitrate has not violated any obligation imposed upon it, whether by the Railway Labor Act or by the Norris-LaGuardia Act. No one has recourse against it by any legal means on account of this failure. Respondent is free to arbitrate or not, as it chooses. But if it refuses, it loses the legal right to have an injunction issued by a federal court or, to put the matter more accurately, it fails to perfect the right to such relief. This is not compulsory arbitration. It is compulsory choice between the right to decline arbitration and the right to have the aid of equity in a federal court. . . Arbitration under the Railway Labor Act was available, afforded a method for settlement Congress itself has provided, and until respondent accepted this method it has not made 'every reasonable effort to settle' the dispute, as Section 8 requires."

To the same effect see: *Hilbert* v. *Pennsylvania R. Co.*, 290 F. 2d 881 (C.A. 7, 1961); *Westchester Lodge 2186, etc.* v. *Railway Express Agency*, 329 F. 2d 748 (C.A. 2, 1964); *Manion* v. *Kansas City Terminal Railway Co.*, 353 U.S. 706 (1957).

The holding of the Court below that Section 8 did not disqualify the respondent carriers from injunctive relief because negotiation with petitioner was not required by law, was plainly contrary to the prior holdings of this Court.

(4) Portions of the rulings of the Court below construing P.L. 88-108, the Award of Arbitration Board No. 282, and the Norris-LaGuardia Act, are squarely in conflict with the prior decisions of this Court in *Brotherhood of Locomotive Engineers* v. *Chicago, Rock Island & Pacific R. Co.*, 382 U.S. 423 (1966); *Order of Railroad Telegraphers* v. *Chicago and Northwestern R. Co.*, 362 U.S. 330 (1960); and *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R. R.*, 321 U.S. 50 (1944). Other portions of the decisions below decide important questions of Federal law which have not been, but should be, settled by this Court. The decisions below adversely affect 7,574 trainmen, and leave in complete confusion the status of the remainder of the total national trainmen workforce of 122,000 persons. Further, we invite to the attention of the Court that, since the enactment of Public Law 88-108, the Congress has enacted similar emergency legislation to avert another national railroad work stoppage involving the shopcraft unions. P.L. 90-54, July 17, 1967. The legitimate concern of the President, the Congress, and of the public over the interruption of essential transportation services occasioned by labor disputes is well known. If such emergency legislation

is to become a way of life in the transportation industry, the carriers of the various modes and their millions of employees are entitled to know its meaning and consequences. They, as well as the Congress itself, are entitled to know whether a Congressional limitation of two years is meaningless, whether the parties have any obligation to attempt to dispose of the dispute during the moratorium period, and what are the consequences of the expiration of the emergency legislation These questions are crucial to the lives and fortunes of millions of workmen in the transportation industry. Although this Court sustained the validity of such emergency legislation in *Wilson* v. *New,* 243 U.S. 332 (1917), it later said that "It is not too much to say that the ruling in Wilson v. New went to the borderline, although it concerned an interstate common carrier in the presence of a nation-wide emergency and the possibility of great disaster." (*Wolf Packing Co.* v. *Court of Industrial Relations,* 262 U.S. 522, 544 (1923). And Mr. Justice Holmes said of similar emergency enactments that "they went to the verge of the law, . . ." (*Pennsylvania Coal Company* v. *Mahon,* 260 U.S. 393, 416 [1922].) The issues herein are of sufficient importance to warrant final disposition by this Court.

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